

Uday Kumar and ors. Vs. the State of Bihar and ors.

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Court : Patna

Decided On : Nov-23-2004

Judge : Nagendra Rai, A.C.J. and S.N. Hussain, J.

Acts : Bihar Motor Vehicles Taxation Act, 1994 - Sections 5(2); Bihar Motor Vehicles Taxation (Amendment) Act, 2002

Appeal No. : C.W.J.C. No. 8345 of 2004

Appellant : Uday Kumar and ors.

Respondent : The State of Bihar and ors.

Advocate for Def. : R.K. Dutta, SC IV

Advocate for Pet/Ap. : Rajeev Ranjan Prasad and Amod Kumar, Advs.

Disposition : Application allowed

Judgement :

Nagendra Rai, A.C.J. and S.N. Hussain, J.

1. The petitioners, who are the owners of the motor vehicles having seating capacity of five or more persons but below twelve, have filed the present writ application for holding that they are not liable to pay Additional Tax under Schedule II, read with Section 5(2) of the Bihar Motor Vehicle Taxation Act, 1994 (for short 'the Taxation Act'), as amended in 2002 as well as for quashing letter

dated 3.1.2004, as annexed as Annexure 3, issued by the Secretary-cum-State Transport Commissioner, for treating the motor vehicles of the petitioners as non-personalised vehicles and charged the Additional tax in; terms of the amendment of the provisions of the Act in 2002 by Bihar Act 11 of 2002, which came into effect on 16.7.2002. They have also challenged the demand notices dated 28.4.2004 (Annexure 1 Series), issued by the District Transport Officer, Jehanabad, in pursuance of the said letter dated 3.1.2004.

2. The main ground of challenge made on behalf of the petitioners is that their vehicles are not covered by any of the items mentioned in Schedule II and as such they are not liable to pay Additional Tax in terms of the amended provisions of the Taxation Act and in the view of the matter the Secretary-cum-State Transport Commissioner, Government of Bihar, has no power to issue any direction to treat the vehicles of the petitioners as non-personalised vehicles and, thus, liable to pay Additional Tax as their acts are ultra vires of the amended provisions of the Taxation Act.

3. The case of the petitioners is that petitioner No. 1 owns and possesses a Motor Vehicle Mahendra & Mahendra Jeep 1997 Model having sitting capacity of more than five persons bearing registration No. BR-25-0013 for personal use. Petitioner No. 2 owns and possesses a Mahendra & Mahendra Ltd. Commander Jeep, Model 2001 having sitting capacity of 10 persons bearing registration No. BR-25A-1921 for personal use. Petitioner No. 3 owns and possesses a Motor Vehicle/Jeep having a sitting capacity of 10 persons bearing registration No. BR-25P-3635 for personal use. Petitioner No. 4 owns and possesses a Mahindra and Mahindra Jeep Model 2000 having sitting capacity of 11 persons bearing registration No. BR-25-2786 for personal use and petitioner No. 5 owns and possesses a Mahindra and Mahindra Jeep Model 1996 having a sitting capacity of 10 persons bearing registration No. BR-25A-8319 for personal use.

4. All the petitioners have stated on affidavit that the vehicles are being used for their personal use and not for commercial or public purposes; or for carrying persons or for hire or reward. Their vehicles are registered in the district of Jehanabad.

5. Before appreciating the point raised at the bar, it is relevant to refer to the relevant provisions of the Motor Vehicle Act (for short 'the Act') and the Taxation Act. There is no dispute that the State Legislature has power to enact the Taxation Act to impose tax on the motor vehicles. Section 5 of the Taxation Act is the charging section and it provides that on or from the date of commencement of this Act, every owner of a registered motor vehicle shall pay tax on such vehicle at the rate specified in Schedule I. It further provides that on and from the date of commencement of this Act, every owner of a registered motor vehicle shall pay Additional Motor Vehicles Tax on such vehicle at the rate specified in Schedule II. The power is also given under the charging section to increase the rate of tax specified in the Schedules.

6. Clause (c) of the definition of Taxation Act as mentioned in Section 2 provides that any other expression, not specifically defined under this Act, shall have the same meaning assigned to them, respectively, in the Motor Vehicles Act. of 1988. Section 7 of the Act contains a provision with regard to payment of tax and Schedule I of the Act as provided under Section 5(1) contains different rates of tax under the Act and Schedule II contains the rates of additional motor vehicle tax on the transport vehicles. The Taxation Act was amended, as stated above by Act 11 of 2002 and apart from several amendments, schedules were also amended. A copy of the said amendment has been annexed as Annexure 2 to the writ application.

7. As there is no dispute between the parties that the liabilities of the petitioners are there to pay the tax in terms of Section 5, read with Schedule I of the Taxation Act, it is not necessary to reproduce the amended provision of Schedule I. Schedule II contains the revised additional motor vehicles tax on transport vehicles and it provides additional rates of tax on goods carriage including trailers and the motor-cabs (with seating capacity up to six persons exclusive of the driver and transport vehicles (excluding goods carriage and motor- cabs).

8. Admittedly, serial No. 1 goods carriage and serial No. 2 motor-cabs are not relevant for the present case and as such they are not reproduced. However, rate of tax under serial No. 3; which deals with the transport vehicles (excluding goods

carriage and motor-cabs), is reproduced below :-

Sl. Class of vehicles Distance to be covered in a Quarter Additional rate of quarterly

No. quarter tax per seat

3. Transport vehicles (a) up to 9000 km. Rs. 300/- per seat per

(excluding goods quarter for ordinary bus.

carriage and motor

cabs)

(b) exceeding 9000 Km. but not Rs. 400/- per seat per

exceeding 12000 k.m. quarter for ordinary bus.

(c) exceeding 12000 km. but not Rs. 500/- per seat per

exceeding 15000 km. quarter for ordinary bus.

(d) exceeding 15000 km. but not Rs. 630/- per seat per

quarter for ordinary bus. exceeding 18000 km.

(e) exceeding 18000 km. Rs. 630/- per seat per

quarter+160 per seat per

quarter for every slab of

additional 4500 km. for

ordinary bus.

Besides, for the following categories of classified vehicles, the percentage rates of quarterly additional tax per seat will be higher than for the ordinary buses above,

as stated above :-

(a) Express 5%

(b) Semi Deluxe 25%

(c) Deluxe 50%

(d) A.C. 60%

Every sleeper in a category above will be deemed equal to two seats.'

9. Under the Taxation Act, the personalised vehicle has been defined under Section- 2(h), according to which the 'Personalised Vehicle' means motor cycle (including moped, scooter and cycle with attachment for propelling the same by mechanical power) and a Motor car with seating capacity of more than three but not exceeding five which are solely used for personal purposes. Non-personalised vehicle has not been defined under the Taxation Act. Thus, the definition of the motor vehicle, as given under the Motor Vehicles Act, is to be looked into for the purposes of determining the nature of the vehicles, kept by 'the petitioners.

10. The transport vehicle, as mentioned at serial No. 3 of Schedule II, has been defined under Section 2(47) of the Act, which means a public service vehicle, a goods carriage, an educational institution bus or a private service vehicle. The 'public service vehicle' has been defined under Section 2(35), which means any motor vehicle used or adapted to be used for the carriage of passengers for hire or reward, and includes a maxi cab, a motor cab, contract carriage, and stage carriage. The 'goods carriage' has been defined under Section 2(14), which means any motor vehicle constructed or adapted for use solely for the carriage of goods, or any motor vehicle not so constructed or adapted when used for the carriage of goods. The 'educational institution bus' has been defined under Section 2(11), which means an omnibus, which is owned by a college, school or other educational institution and used solely for the purpose of transporting students or staff of the educational institution in connection with any of its activities and the 'private service vehicle' has been defined under Section 2(33) of the Act, which means a motor vehicle constructed or adapted to carry more than six persons

excluding the driver and ordinarily used by or on behalf of the owner of such vehicle for the purpose of carrying persons for, or in connection with, his trade or business otherwise than for hire or reward but does not include a motor vehicle used for public purposes. The 'omnibus' has been defined under Section 2(39), which means any motor vehicle constructed or adapted to carry more than six persons excluding the driver.

10. From the aforesaid definitions, it is clear that the transport vehicle is a vehicle, which is used as a public service vehicle for hire or reward, a goods carriage for carrying goods, an educational institution bus for their own purposes and the private service vehicles for the trade and commerce of the persons concerned. The vehicles used by the petitioners are neither in connection with any trade or business or fall in any of those definitions, which mean the transport vehicles as defined under Section 2(47) of the Act.

11. The State also in the counter-affidavit has admitted that the vehicles of the petitioners are omnibus. In paragraph 6 of the counter-affidavit, it is stated that the vehicle come under the purview of omnibus as defined in the Motor Vehicles Act, 1988 and they are having seating capacity of more than six persons and they are not personalised vehicles as defined under the Taxation Act and as such the same should be treated as transport vehicles, which are liable to pay additional tax under Serial No. 3 of Schedule II as quoted above.

12. Learned counsel appearing for the petitioners submitted that the taxing statute is to be construed strictly. No doubt, all motor vehicles are liable to pay tax and additional tax under the charging section as provided under Schedules I and II and at the rates as provided under the statutory provisions but if the vehicle is not covered by any of the items provided under Schedule II so far as the payment of additional tax is concerned, then the authorities are not competent in law to recover the same by the executive fiat by issuing a letter dated 3.1.2004.

13. Learned counsel appearing for the State, on the other hand, submitted that the personalised vehicle has been defined under the Act and, admittedly, as the motor vehicles of the petitioners are not the personalised vehicles, they will fall under the heading of non-personalised vehicles, which mean transport vehicles and are

treated to be used for commercial or public purposes and as such are liable to pay additional tax as provided under Sl. No. 3 of the Schedule II of the Taxation Act.

14. The settled law is that the taxing statute is to be strictly construed. There are three components of taxing statute, namely, subject of the tax, the person covered by the Act to pay tax and the rate at which the tax is to be collected. If there is any ambiguity or vagueness in respect of these components which cannot be removed by a reasonable construction then there is no liability to pay tax unless the competent authority removes the defect.

15. A passage from the Book of Principles of Statutory Interpretation by Justice G.P. Singh in Eighth Edition, page 635, as captioned with the General Principle Governing Interpretation on Taxing Statutes, has been quoted with approval by the Apex Court at paragraph No. 9 in the case of I.T. Commissioner v. Kasturi & Sons Ltd., reported in AIR 1999 SC 1276, which runs as follows :-

'.....The well established rule in the familiar words of LORD WENSLEYDALE, reaffirmed by LORD HALSBURY and LORD SIMONDS, means : 'The subject is not to be taxed without clear words for that purpose; and also that every Act of Parliament must be read according to the natural construction of its words.' In a classic passage LORD CAIRNS stated the principle thus : 'If the person sought to be taxed comes within the letter of the law he must be taxed, however, great the hardship may appear to the judicial mind to be. On the other hand, if the Crown seeking to recover the tax, cannot bring the subject within the letter of the law, the subject is free, however, apparently within the, spirit of law the case might otherwise appear to be. In other words, if there be admissible in any statute, what is called an equitable, construction, certainly, such a construction is not admissible in a taxing statute where you can simply adhere to the words of the statute. 'VISCOUNT SIMON quoted with approval a passage from Fiowlatt, J. expressing the principle in the following words : 'In a taxing Act one has to look merely at what is clearly said. There is no room for any intendment. There is no enquiry about a tax. There is no presumption as to tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used.' Relying upon this passage Lord Upjohn said : 'Fiscal measures are not built upon any theory of taxation.'

16. Thus, the settled law is that while construing the taxing statute, there is no presumption as to tax. Nothing is to be read in, nothing is to be implied and the Court has to see as to what expressly the provision says. The Court has also not to construe the subject of the matter.

17. Justice Bhagwati, J. in the case of *A.V. Fernandez v. State of Kerala*, reported in AIR 1957 SC 657, has stated as follows :-

'In construing fiscal statutes and in determining the liability of a subject to tax one must have regard to the strict letter of the law and not merely to the spirit of the statute or the substance of the law. If the Revenue satisfies the Court, that the case falls strictly within the provisions of the law, the subject can be taxed, if, on the other hand, the case is not covered within the four corners of the provisions of the taxing statute, no tax can be imposed by inference or by analogy or by trying to probe into the intentions of the legislature and by considering what was the substance of the matter.'

18. This apart, the general principle of interpretation is that the Court has no power to legislate, rewrite, recast or reframe the legislation. It also cannot add words to a statute or read words into it which are not there. See *Union of India v. Deoki Nandan Aggarwal*, reported in, AIR 1992 SC 96.

19. In view of the settled law, now it has to be considered as to whether the petitioners are liable to pay additional tax in terms of the provisions of the Taxation Act or not. The vehicles used by the petitioners are omnibus as defined under the Act as they carry more than six passengers. The question is as to whether these are transport vehicles or not. From the perusal of the definition of the transport vehicle and the nature of the vehicle as enumerated in the definition of motor vehicle, it is clear that if the omnibus is not used for any of the purposes as mentioned above, then the said omnibus is not a transport vehicle. It may not be personalised vehicle in terms of the provision of the Taxation Act and at the same time it cannot be transport vehicle as defined under the Act, which definition has been incorporated in the Taxation Act by definition clause as mentioned above.

20. Three categories are liable to pay additional tax in Schedule II, namely Goods carriage-admittedly the petitioners' vehicles are not goods carriage; then comes motor-cabs (with seating capacity up to six persons exclusive of the driver) the vehicles of the petitioners are not included in the said definition and the third category is the transport vehicles (excluding goods-carriage and motor-cabs). If the petitioners' vehicles are covered by the definition of transport vehicles then they are liable to pay additional tax. The details under Schedule II show that under the heading 'Transport Vehicles', rates have been provided only with regard to the buses and not for any other type of vehicles. The petitioners' vehicles are not the buses either Ordinary; or Express; or Semi Deluxe, or Deluxe or A.C.

21. In that view of the matter, from the reading of Sl. No. 3 of Schedule-II, and the definition of the transport vehicles incorporated therein, it is clear that the omnibus having sitting capacity of more than six persons and being used for personal purposes is not covered by Serial No. 3. The fact that the petitioners' vehicles are omnibus is admitted by the State in its counter-affidavit. The submission that only because it is not a personalised vehicle, it will become a transport vehicle under the provisions of the Act has no legs to stand because definition of the vehicle has been adapted from the Motor Vehicles Act and the same does not include the type of vehicles possessed by the petitioners.

22. In that view of the matter, we are of the view that the omnibus having sitting capacity of more than five but below 12, not used for any of the purposes as provided in the definition of Transport Vehicle read with other definition is not covered by Serial No. 3 of Schedule II of the Taxation Act and, accordingly, the letter issued by the Secretary-cum-Transport Commissioner, as contained in Annexure-3, directing for treating the vehicles of the petitioners as transport vehicles (non-personalised) and charging additional tax from them is ultra vires and without jurisdiction. Accordingly, the aforesaid letter of the Secretary-cumTransport Commissioner so far as directing that omnibus having seating capacity of more than six persons, and being used for personal purposes, be treated as transport vehicle is held to be impermissible in law.

23. In the result, this writ application is allowed, Annexure 3 is held to be invalid so far as the nature of the vehicles as stated above is concerned and as the petitioners are not liable to pay additional tax in view of the provisions contained in Schedule II Taxation Act, the notices (Annexure 1 series) issued pursuant to Annexure 3, making demand of additional tax from the petitioners are quashed.

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